

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NANCY ANN ASHENHURST-GALLINA,
et al.,

Plaintiffs, CIVIL CASE NO. 08-11464

v.

JAMES A. KANDREVAS, et al., HONORABLE PAUL V. GADOLA
U.S. DISTRICT COURT

Defendants.

/

ORDER REQUIRING PLAINTIFFS TO AMEND COMPLAINT

Before the Court is the Report and Recommendation of United States Magistrate Judge Mona K. Majzoub. In her Report and Recommendation, the Magistrate Judge recommends that the Court dismiss this case because Plaintiffs' Complaint fails to state a claim upon which relief may be granted. On May 27, 2008, Plaintiffs filed a "Notice of Objection." For the reasons below, the Court declines to accept the Report and Recommendation of the Magistrate Judge and orders Plaintiffs to file an amended complaint within thirty (30) days of this Order.

A court has a duty to screen civil complaints in which the plaintiff is proceeding in forma pauperis, 28 U.S.C. § 1915(e)(2)(B), and in which the plaintiff is a prisoner seeking redress from a governmental entity. 28 U.S.C. § 1915A. If the court determines that the complaint is frivolous, malicious, or fails to state a claim upon which relief can be granted, the court may dismiss the complaint.

In her Report and Recommendation, the Magistrate Judge noted certain allegations regarding Plaintiff Nancy Ann Gallina's confinement as a prisoner. Consequently, the Magistrate Judge

reviewed the case pursuant to 28 U.S.C. § 1915A, determined that Plaintiffs' Complaint failed to state a claim upon which relief can be granted, and recommended that the entire case be dismissed sua sponte on the Court's own initiative. In making this finding, the Magistrate Judge listed many problems with Plaintiffs' Complaint, including a failure to properly identify Defendants, a failure to give addresses for Defendants, a failure to show exhaustion of state court remedies, a lack of jurisdiction due to immunity of Defendants, and a failure to make sufficient allegations of claims against certain Defendants.

In the objections to the Report and Recommendation, Plaintiffs argue that 28 U.S.C. § 1915A is not applicable because Plaintiffs are not confined in prison. The Court notes that though Plaintiffs initially filed an application to proceed in forma pauperis, Plaintiffs paid the filing fee on May 8, 2008. Accordingly, Plaintiffs are not proceeding in forma pauperis and, allegedly, are not prisoners seeking redress from a governmental entity. Generally, under these circumstances, a court should not sua sponte dismiss a complaint without giving the plaintiff the opportunity to amend the complaint. *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999). Therefore, the Court will provide Plaintiffs with the opportunity to amend their Complaint. Plaintiffs are advised to address the many deficiencies in the Complaint identified by the Magistrate Judge when filing an Amended Complaint. Failure to do so may result in the Court dismissing this case for failure to state a claim upon which relief can be granted.

Accordingly, the Court **DECLINES TO ADOPT** the Report and Recommendation [docket entry #8] as the opinion of this Court.

IT IS HEREBY ORDERED that Plaintiffs' must file an Amended Complaint within **thirty**

(30) days of this Order. Failure to file an Amended Complaint in accordance with the terms of this Order may result in the dismissal of this case.

SO ORDERED.

Dated: June 19, 2008

s/Paul V. Gadola

HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on June 19, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: William Ashenhurst; Nancy Ann Ashenhurst-Gallina; Charles Patrick Cratty; Kenneth Paul Gallina; Wayne Edward Hayes.

s/Ruth A. Brissaud

Ruth A. Brissaud, Case Manager
(810) 341-7845